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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,626	08/30/2001	Safwan Shah	020342-000900US	9256
20350	7590	01/13/2006		EXAMINER
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			COBY, FRANTZ	
			ART UNIT	PAPER NUMBER
			2161	

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/944,626	SHAH ET AL.	
	Examiner	Art Unit	
	Frantz Coby	2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 October 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-19, 21 and 23-40 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-19, 21, 23-40 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____.

This is in response to Applicant's amendment filed on October 21, 2005 in which claims 1, 3-19, 21, 23-40 are presented for examination. Claims 2, 20, 22 are canceled.

Status of Claims

Claims 1, 3-19, 21, 23-40 are pending.

Response to Arguments

Applicant's arguments filed on the aforementioned date have been fully considered but they are not persuasive. Therefore, the rejection of claims 1, 3-19, 21, 23-40 under Section 103(a) mailed on July 27, 2005 remains.

Also, the rejection of claims 1, 3-19, 21, 23-40 mailed on July 27, 2005 is hereby incorporated by reference.

Remarks

The Applicant argued, "the rejections rely on disclosure of Swartz that are not prior art to the application. Specifically, the application has a filing date of August 30, 2001 (Exhibit 1, Filing Receipt). Swartz has a filing date of October 4, 2004 and claims the benefit of various earlier filing dates according to an application chain that identifies five applications going back as far as September 5, 1996. The relevant filing date for establishing that certain disclosures of Swartz are prior art is whether any particular one of these prior applications) properly supports the subject matter used to make the

rejection." The Applicant continues to support the above argument by stating that, "the earliest inclusion of these disclosures in the application chain is in U.S. Pat. Appl. No. 09/990,597, filed November 21, 2001. A copy of the immediately preceding application, U.S. Pat. Appl. No. 09/487,923, filed January 19, 2000, was obtained by Applicants from the Office's PAIR site and is attached ms Exhibit 2. An examination of this application clearly shows that the disclosures relied on in the Office Action are absent so that those disclosures are only entitled to a filing date as early as November 21, 2001, i.e. later than the filing date of the Application". However, the Examiner disagrees with the preceding argument because the effective filing date of the Swartz reference is September 5, 1996, which is a date earlier to the effective filing date of the present application. Also, the Applicant's general allegation that "the earliest inclusion of these disclosures in the application claim is in U.S. Pat. Appl. No. 09/990,597, filed November 21, 2001" is not clear because the applicant fails to specifically point out the subject matter, related to the claim invention, that was or was not disclose. Last, an examination by the Examiner, reveals that the prior applications filed prior to the Applicant's filing date shows that the disclosure relied by the Examiner are present and therefore, the Swartz reference is prior art because the effective filing date is September 5, 1996.

The Applicant also argued, "even if the disclosures of Swartz were prior art to the Application, Applicants respectfully disagree that any of the cited art discloses the limitation of independent Claim 1 of for each customer who does not execute a

transaction with the first entity, recording particulars of such each customer's visit in the database as part of a record affiliated with an identification of such each customer," or the corresponding limitations of independent Claims 29, 31, and 36. The Office Action appears to acknowledge at p. 4 that such a limitation is not disclosed in Ogasawara, citing paragraphs 79, 115, and 191 for this limitation. Notwithstanding the assertion in the Office Action, none of these portions of Swartz discloses the claim limitation, particularly the requirement that the particulars be recorded as part of a record affiliated with an identification of such each customer. For example, !79 describes generally the type of information that may be recorded when a customer does execute a transaction, but is silent about recording information for customers who do not execute a transaction." Similarly, paragraph 115, while disclosing that a video camera may be used to record "customer transactions" is silent on recording particulars of a visit by a customer who does not execute a transaction." Even if it may be inferred from the disclosure of :1 15 that visits by customers who do not execute transactions will also be recorded by the video camera, there is no teaching or suggesting of affiliating a record that includes particulars of each customer's visit with an identification of that customer. Finally, !191 describes generally the presentation of messages to customers who execute transactions about specific products; it does not teach or suggest recording information about customers who do not execute a transaction, and certainly does not teach or suggest affiliating a record that includes particulars of such a customer's visit with an identification of the customer" The respectfully submits that Claims 1 , 3-4, 8-10, 13-14, 16-18, 23-27, 31-32, 34-35 and 36-37 and 39-40 are rejected under 35

U.S.C. 103(a) as being unpatentable over Pub. No.: US 2002/0016740 of Ogasawara in view of Pub. No.: US 2005/0040230 A1 of Swartz et al. (hereinafter Swartz) as detailed above (See rejection of the pending claims in office action mailed on July 27, 2005).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz Coby whose telephone number is 571 272 4017. The examiner can normally be reached on Monday-Saturday 3:00PM-10:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 571 272 4023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



FRANTZ COBY
PRIMARY EXAMINER

January 6, 2006